



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,954	12/02/2003	Jeffrey L. Sands	60246-296	2882

26096 7590 09/06/2007
CARLSON, GASKEY & OLDS, P.C.
400 WEST MAPLE ROAD
SUITE 350
BIRMINGHAM, MI 48009

EXAMINER

KUMAR, RAKESH

ART UNIT	PAPER NUMBER
----------	--------------

3654

MAIL DATE	DELIVERY MODE
-----------	---------------

09/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/725,954	Applicant(s) SANDS ET AL.	
	Examiner Rakesh Kumar	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-12 and 18-20 is/are rejected.
- 7) ☒ Claim(s) 2,3 and 13-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

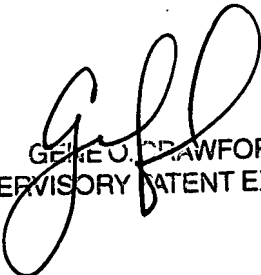
In view of the appeal brief filed on 0502/2007, PROSECUTION IS HEREBY REOPENED. New grounds of rejections set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, as disclosed in claim

Art Unit: 3654

19, the transferring of the item from the automated freezer to a grill must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cihanek (US 5,813,569).

Referring to claim 1. Cihanek discloses an automated freezer (Figure 3) comprising:

a removable cartridge (42; Figure) for storing at least one item (94); and
a platform moveable (58) within said removable cartridge (42) in response to a request (request for removing the item from the top of the cartridge) for said at least one item (94).

Referring to claim 18. Cihanek discloses a method for removing at least one item (94) from an automated freezer (Figure 3), the method comprising the steps of:

loading the at least one item (94) into a cartridge (42);
loading the cartridge (42) in the automated freezer (Figure 3);
sending a request (request for removing the item from the top of the cartridge) to the automated freezer; and
automatically removing the at least one item (94) from the automated freezer in response to said request (request for removing the item from the top of the cartridge).

Referring to claim 19. The articles removed from the freezer can be transferred to any area once the articles are removed from the dispenser. It is to be noted the Applicants drawings do not show a transferring process to a grill as stated in the claim,

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek in view of Kaufman (US 5,335,816).

Referring to claim 4 and 7. Cihanek discloses all claimed limitations as recited in claim 4 however Cihanek does not disclose a removal device.

Kaufman discloses an apparatus including a removal device (138; Figure 8) and an exit opening (132), and said removal device (138) removes said at least one item (136) from the dispenser through said exit opening (132) in response to said request (request for removing the item from the top of the cartridge). Wherein said removal device is pivotal (Figure 7 and 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a removal device wherein the removal device removes an item from the freezer in response to a request as taught by Kaufman because a removal device would improve the removal of items from the dispenser.

Regarding claim 5, Kaufman teaches of an apparatus wherein said platform (122) raises after said at least one item (102) exits said dispenser through said exit opening (132).

Claims 6,8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek in view of Kaufman and further in view of Mishina (US 5,555,965).

Referring to claims 6 and 20. Mishina discloses a depletion sensor (134 and 138) strategically placed, wherein the sensor detects complete product depletion (Col. 7 line 54-65). Furthermore, Mishina discloses visual indicator disposed on the dispenser to indicate when said sensor detects that the product is empty (Col. 5 line 44).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek in view of Kaufman to include a depletion sensor, which detects complete product depletion as taught by Mishina because the dispenser would not activate the removal device when the items within the dispenser are depleted thus reducing access wear on the removal device in response to a request.

Regarding claim 8, Kaufman discloses an apparatus further including a controller (22; CPU; Figure 12) associated with the automated dispenser and a POS (point of service device including one of 30,26,58,56,18; Figure 12) device, and wherein said request comprises a signal sent by said POS device (a request from one of 30,26,58,56,18; See Figure 12).

Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek as applied to claim 1 above, and further in view of Tansley (US 2,315,827).

Referring to claim 9. Tansley discloses a dispenser wherein the cartridge (10; Figure 1).has a substantially circular inner profile.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a cartridge comprising a circular inner profile to house articles as taught by Tansley because the dispenser would be able to dispense circular shaped articles.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cihanek as applied to claim 1 above, and further in view of Covington (US 4,142,863).

Referring to claim 10. Covington discloses a cartridge (Figure 1) includes a first portion (12) and a second portion (14), and said first portion (12) is removably attached to said second portion (14; see Figure 3) by an attachment feature (see flanges expending at wall edges of member 14; Figure 3), and said first portion (12) includes a first bottom end having a first half-circular (32; semicircular) cutout and said second portion (14) includes a second bottom end having a second half-circular cutout (32; semicircular), said first half-circular (12) cutout and said second half- circular cutout (14) define a circular cutout (see member 32; Figure 5) when said first portion (12) is attached to said second position (14).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a cartridge comprising a first and second portion having a semi circular cutout at the base of the portions as taught by Covington because the platform could be moved within the

Art Unit: 3654

cartridge through an external driving means thus reducing the cost for the replacement cartridges.

Regarding claims 11 and 12. Covington discloses an article dispenser wherein the platform (top end of member 30; Figure 3) has a platform diameter (diameter of top end of member 30) and the circular cutout (32) has a cutout diameter (Figure 3), and said cutout diameter is greater than the platform diameter (see Figure 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify the teachings of Cihanek to include a platform diameter smaller than the cutout diameter as taught by Covington because the driving means of the articles would be integrated outside the cartridge thus reducing cost of the replacement cartridge.

Allowable Subject Matter

Claims 2,3 and 13-17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments see Appeal Brief, filed 05/02/2007, with respect to the rejection(s) of claim(s) 1-20 under 103(a) in view of Kaufman in view Cihanek have

been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 102(b) Kaufman. See modified rejection above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (571) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


GENE O. CRAWFORD
SUPERVISORY PATENT EXAMINER

Application/Control Number: 10/725,954

Page 10

Art Unit: 3654

RK

September 1, 2007